

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

MIDSOUTH ORTHOPEDIC)	
ASSOCIATES, P.C.,)	
)	
Plaintiff/Counter-)	
Defendant,)	
)	
v.)	No. 05-2430 M1/V
)	
REGIONS FINANCIAL)	
CORPORATION,)	
)	
Defendant/Counter-)	
Plaintiff/Third-Party)	
Plaintiff,)	
)	
v.)	
)	
DR. LAWRENCE SCHRADER and)	
ANN CINDY TURNER,)	
)	
Third-Party Defendants.)	

ORDER ADOPTING REPORT AND RECOMMENDATION

Before the Court is the Magistrate's Report and Recommendation on Defendant's Motion to Dismiss for Failure of Plaintiff to Obey Court Orders, filed September 19, 2006. The Magistrate recommends granting Regions Financial Corporation's motion to dismiss the complaint, filed August 24, 2006, as a sanction under Federal Rules of Civil Procedure 37(d) and 41(b) for failing to comply with the court's orders to provide discovery responses.

In determining that such an extreme sanction is appropriate, the Magistrate determined that (1) Midsouth Orthopedic's failure

to respond to discovery requests and orders compelling discovery was due to its own wilfulness and fault; (2) Regions has been prejudiced because it has not been able to move forward without the requested discovery; (3) the court warned Midsouth Orthopedic that failure to comply would lead to extreme sanctions; and (4) less drastic remedies would be ineffective, as Midsouth Orthopedics has exhibited a disregard for Regions' repeated discovery requests and shown contempt for the Magistrate's orders. The Magistrate also found that such a sanction is appropriate under Federal Rule of Civil Procedure 41(b), for failure to comply with an order of the court. The Magistrate recommends dismissal *with prejudice* because it found that there was a clear record of delay or contumacious conduct.

No objections to the Report and Recommendation have been filed and the time for filing objections has since expired. Upon de novo review of the Magistrate Judge's recommendation, the Court ADOPTS the Report and Recommendation in its entirety and DISMISSES the case with prejudice.

So ORDERED this 14th day of December, 2006.

/s/ Jon P. McCalla
JON P. McCALLA
UNITED STATES DISTRICT COURT